

MOCK TEST PAPER
FINAL (NEW): GROUP: I
PAPER 4: CORPORATE AND ECONOMIC LAWS
ANSWERS

1. (a) According to section 167(1)(h) of the Companies Act, 2013, the office of a director shall become vacant in case he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company. If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in sub-section (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹ 1,00,000 but which may extend to ₹ 5,00,000, or with both. [Section 167(2)]

As per section 168 a director may resign from his office by giving a notice in writing to the company. The Board shall on receipt of such notice take note of the same and intimate Registrar. Board shall place the fact of such resignation in the report of Director in the immediate following General Meeting by the Company. Besides, Director also forward his resignation to registrar within 30 days of his resignation. The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

As per the given facts, the legal position of Mr. Ram in the given situations will be as follows:

- (i) Holding of directorship of Mr. Ram in X Ltd. is invalid in the light of section 167(1)(h) of the Companies Act, 2013. As per the facts, Mr. Ram was appointed as director in X Ltd. due to holding of office in its holding company, ABC Ltd. According to the above provisions, office of director in X Ltd. shall become vacant due to cease of its holding of his office or employment in ABC Ltd. So holding of directorship in X Ltd. by Mr. Ram is invalid and he is liable to vacate.

Even if, Mr. Ram functions as a director knowing that the office of director held by him has become vacant on account of the above provision, he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹ 1,00,000 but which may extend to ₹ 5,00,000, or with both. [Section 167(2)]

- (ii) According to Section 168 of the Companies Act, 2013, Resignation shall effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later, i.e., 15.02.2018. So joining of HXL Ltd. during the notice period i.e. on 13.02.2018, is not valid.

As per section 172 of the Companies Act, 2013, if a company contravenes in compliance to the said provision, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

- (b) Rule 8 of the *Securities Contract (Regulations) Rules, 1957* details the qualifications for becoming the member of a recognised stock exchange. In this regard, Rule 8(3) prescribes that the persons that can be admitted as the members of the recognised stock exchange and mentions that no person who is a member at the time of application for recognition or subsequently admitted as a member if he ceases to be a citizen of India. Thus, Ashmita cannot become the member of the Chennai Stock Exchange since she ceased to be a citizen of India, as she has gained the citizenship of Germany.

In view of the facts, it is clear that Vincent is not a citizen of India. Therefore, as per Rule 8(1) of the Securities Contracts (Regulations) Rules, 1957, he cannot be elected as the member of the recognised stock exchange since he is not a citizen of India. However, the governing body of the Chennai Stock Exchange may take the prior approval of SEBI, in case they are interested in electing Vincent as a member of the stock exchange.

- (c) (i) As per the section 3 of the Prevention of Money Laundering Act, 2002, offence of money laundering is said to be committed when whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

In the given case, Mr. Rajiv Shah and Raghu, is knowingly a party to an offence of lending and accepting of a bribe to move the file of applicant, which was prima facie rejected by the authority. Both Mr. Rajiv Shah and Raghu, are guilty of offence of money laundering.

Section 4 of the PMLA, specifies punishment for money-laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

So accordingly, Mr. Rajiv Shah and Raghu are punishable in compliance with the above provisions.

- (ii) **Appeal to Appellate Tribunal:** According to section 25 of the Prevention of Money Laundering Act, 2002, the Appellate Tribunal constituted under section 12(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act.

The appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Adjudicating Authority, However, period may be extended on the sufficient cause. The Appellate Tribunal may after hearing the parties, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.

Any person aggrieved by any decision or order of the Appellate Tribunal, may file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal. (Section 42)

In the light of the above provisions of the Act, the company is advised to prefer an appeal to Appellate Tribunal in the first instance.

2. (a) The provision of Section 218 of the Companies Act, 2013 states that, the company shall require to take approval of the tribunal before taking action against the employee if there is any pendency of any proceedings against any person concerned in the conduct and management of the affairs of the company.

The company shall require approval in the following circumstances:

- discharge or suspension of an employee; or
- punishment to an employee by dismissal, removal, reduction in rank or otherwise; or
- change in the terms of employment to the disadvantage of employee(s);

The Tribunal shall notify its objection to the action proposed in writing.

In case, the company other body corporate or person concerned does not receive the approval of the Tribunal within 30 days of making the application, it may proceed to take the action proposed against the employee. That means it can be considered as a deemed approval by the tribunal.

Appeal to the Appellate Tribunal: If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of 30 days of the receipt of the notice of the objection, refer an appeal to the Appellate Tribunal in such manner and on payment of fees of ₹ 1,000 as per the schedule of Fees.

The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.

Based upon the above provisions, following are the answers:

- Yes, the termination of Mr. Atul made by the company is totally valid in law and company can do so by considering deemed approval of tribunal.
 - In this scenario, Mr. Atul has no any remedy available. As per the provision of the law appeal to the appellate tribunal can be made only if the person is dissatisfied with the objection raised by the tribunal. Hence, in this case, the tribunal has not replied, Mr. Atul cannot refer an appeal to Appellate Tribunal.
 - In this case, Mr. Atul can refer and appeal to Appellate Tribunal within 30 days of the receiving letter of objection raised by the tribunal and with payment of Fees on ₹ 1,000 as per schedule of Fees.
- (b) (i) Section 244 of the Companies Act, 2013 provides the eligibility of members who hold the right to file the application under section 241 for oppression and mismanagement with the Tribunal. These qualification as provided in section 244 ensure that only the persons with sufficient interest in the affairs of the company can file the petition under section 241 of the Act. According to the section in the case of a company not having a share capital, not less than one-fifth of the total number of its members are eligible to make an application before the Tribunal. Where any members of a company are entitled to make an application under Section 244 (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

In the given scenario, requirement of minimum numbers of members is fulfilled i.e. it is more than $\frac{1}{5}$ th of the total number of its members of the company ($\frac{1}{5} \times 100 = 20$). So the members of the company are eligible to file the petition to tribunal under section 241.

However, the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in section 244, so as to enable the members to apply under section 241.

- (ii) According to section 221 of the Companies Act, 2013, if it appears to the Tribunal, on a complaint made by members as specified under section 244(1) that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of its members, Tribunal ordered that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

Here in the given case, management disposed of the certain assets within 1 year of such order of Tribunal. So accordingly, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

- (c) All offences which are punishable in this Act with imprisonment of 2 years or more, shall be triable only by the special court established for the area in which the registered office of the company in relation to which the offence is committed. According to section 436 of the

Companies Act, 2013 where there are more special courts than one for such area, by such one of them as may be specified in this behalf by the high court concerned.

Accordingly, in the given case, there are more than one special court in such area where registered office of Excel Ltd. is situated. The jurisdiction for trial in special court will be specified by High Court of the State (i.e. Rajasthan).

- (d) (i) No. As per Section 4(e) of FCRA, 2010 read with Rule 6 of FCRR, 2011, even the persons prohibited under section 3, i.e., persons not permitted to accept foreign contribution, are allowed to accept foreign contribution from their relatives. However, in terms of Rule 6 of FCRR, 2011, any person receiving foreign contribution in excess of one lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in prescribed Form within thirty days from the date of receipt of such contribution.

So Mr. Indian shall inform the Central Government of his receiving of the foreign contribution of 1.10 lakh from his relative due to receiving of foreign contribution in excess of 1 lakh rupees.

- (ii) As per the Arbitration and Conciliation Act, 1996 an agreement must be in writing. There is however no requirement for the same to be in writing in one document. There is also no particular form or template for an arbitration agreement. The communication over email of the term of services is proper valid agreement and the same have been stood affirmed by reason of their conduct. This would be an arbitration agreement in writing contained in correspondence between the parties.

3. (a) **Filing of an application for purpose of reconstruction or companies involving merger/ amalgamation or transfer of undertaking, property etc.:** Where an application is made to the Tribunal under section 230 of the Companies Act, 2013 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—

- (a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and
- (b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies,

the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply *mutatis mutandis*.

Circulation of information for the meeting by the merging companies / the companies in respect of which a division is proposed: As per section 232(2) where an order has been made by the Tribunal as above, merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, -

- (a) the draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;
- (b) confirmation that a copy of the draft scheme has been filed with the Registrar;
- (c) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter

shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;

- (d) the report of the expert with regard to valuation, if any;
 - (e) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.
- (b) According to the Section 248(2) of the Companies Act, 2013, a company may, after extinguishing all its liabilities, by a special resolution, or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner.

Further Section 249 provides restrictions on making application under section 248 .

An application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company—

- (a) has changed its name or shifted its registered office from one State to another;
- (b) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;
- (c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;
- (d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or
- (e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

Violation of above conditions on filing of application: If a company files an application in violation of restriction given above, it shall be punishable with fine which may extend to one lakh rupees.

Rights of registrar on non-compliance of conditions by the company: An application filed under above circumstances, shall be withdrawn by the company or rejected by the Registrar as soon as conditions are brought to his notice.

Aggrieved person to file an appeal against the order of registrar: As per section 252(1), any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies. However, a reasonable opportunity is given to the company and all the persons concerned.

According to the above provisions, following are the answers:

- (i) As per the restrictions marked in the Section 249(d) stating that an application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded.

As per the facts application to the registrar for removal of the name of company from the register of companies, was filed by the Eminence Ltd. within three months to the filing of an application to the Tribunal for approval of compromise or arrangement proposal. Therefore, filing of such an application by Eminence Ltd is not valid.

- (ii) If a company files an application in above situation, it shall be punishable with fine which may extend to one lakh rupees. An application so filed, shall be withdrawn by the company or rejected by the Registrar as soon as conditions are brought to his notice.
- (iii) According to the provision given in section 252(1), a person aggrieved by an order of the Registrar, notifying Eminence Ltd. as dissolved under section 248, may:
 - file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar, and
 - if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the Eminence Ltd. in the register of companies.
 - A reasonable opportunity is given to the Eminence Ltd. and all the persons concerned.

(c) Regulation 24: Corporate Governance Requirements with respect to Subsidiary of Listed Entity.

The Board: At least one Independent Director on Board shall be a Director on Board of Unlisted Material Subsidiary. The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.

A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than **50 %** or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal.

Selling, disposing and leasing of assets amounting to more than **20%** of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal

- (d)** SARFAESI is applicable to only those notified NBFC which has an asset base of 500 crore or above, hence in this case the XYZ Finance Ltd. shall be able to sell the bad loans to ARCs through SARFAESI.

Further SARFAESI is applicable to secured loans only, therefore only 45 crore of bad loans can be sold to ARC under SARFAESI.

As per section 26D no secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been registered with the Central Registry, therefore the buyer may not be keen to take over the unregistered loan of 5 crore.

Further NBFCs can invoke SARFAESI for only those cases which are over 1 crore, therefore the 10 cases of 50 lacs each cannot be sold to ARC under SARFAESI.

Therefore, XYZ Finance Ltd. are left with 8 cases of 5 crore each which can be sold to ARC subject to meeting all other conditions of the law.

4. (a) **Powers of Board:** In accordance with the provisions of the Companies Act, 2013, as contained under Section 179(1), the Board of Directors of a company shall be entitled to exercise all such powers and to do all such acts and things, as the company is authorized to exercise and do.

Further, in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made there under including regulations made by the company in general meeting.

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the members or articles of the company or otherwise to be exercised or done by the company in general meeting.

Section 180 (1) of the Companies Act, 2013, provides that the powers of the Board of Directors of a company which can be exercised only with the consent of the company by a special resolution. Clause (a) of Section 180 (1) defines one such power as the power to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking of the whole or substantially the whole or any of such undertakings.

Therefore, the sale of the undertaking of a company can be made by the Board of Directors only with the consent of members of the company accorded vide a special resolution.

Even if the power is given to the Board by the memorandum and articles of the company, the sale of the undertaking must be approved by the shareholders in general meeting by passing a special resolution.

Therefore, the correct procedure to be followed is for the Board to approve the sale of the undertaking clearly specifying the terms of such sale and then convene a general meeting of members to have the proposal approved by a special resolution.

In the given case, the procedure followed is completely incorrect and violative of the provisions of the Act. The shareholders cannot on their own make out a proposal of sale and pass an ordinary resolution to implement it through the directors.

The contention of the shareholders is incorrect in the first place as it is not within their authority to approve a proposal independently of the Board of Directors. It is for the Board to approve a proposal of sale of the undertaking and then get the members to approve it by a special resolution. Accordingly, the contention of the members that they were the principals and directors being their agents were bound to give effect to the decisions of the members is not correct.

Further, in exercising their powers the directors do not act as agent for the majority of members or even all the members. The members therefore, cannot by resolution passed by a majority or even unanimously supersede the powers of directors or instruct them how they shall exercise their powers. The shareholders have, however, the power to alter the Articles of Association of the company in the manner they like subject to the provisions of the Companies Act, 2013.

- (b) **Removal of Member of the SEBI (Section 6 of the Securities and Exchange Board of India Act, 1992)**

According to section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he:

- (i) is, or at any time has been adjudicated as insolvent;
- (ii) is of unsound mind and stands so declared by a competent court;
- (iii) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.

- (iv) has, in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member, he will be given a reasonable opportunity of being heard in the matter.

In the present case, a group of complainants have alleged that Mr. Moral, a member of the SEBI has taken up bribe in the inquiries and audit of the stock exchanges that came up before the Board and he misused his position and committed an offence involving a moral turpitude. Therefore, he should be removed from his office.

The Central Government may remove Mr. Moral from his office after giving him a reasonable opportunity of being heard in the matter.

- (c) As per the regulation 7 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000, no person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau or Hong Kong without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years.

Since in the given case Mr. Xing Yang transferred his immovable property in India on lease for more than 5 years without seeking prior permission of the RBI, this transfer of property is not valid in the eyes of law.

- (d) **Initiation of corporate insolvency resolution process by financial creditor [Section 7 of the Insolvency and Bankruptcy Code, 2016]**

As per the Code, financial creditor either by itself or jointly with other financial creditors may file an application against a corporate debtor before the Adjudicating Authority (Tribunal) when a default has occurred.

The financial creditor shall, along with the application furnish the relevant information as to the record of default, name of resolution professional and other required information.

The Adjudicating Authority shall, within fourteen days of the receipt of the application, ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor. Adjudicating Authority if, satisfied that a default has occurred and complying with other requirements of the section, it may, by order, admit such application; or if, default has not occurred, it may, by order, reject such application.

The corporate insolvency resolution process shall commence from the date of admission of the application. The Adjudicating Authority shall communicate the order to the financial creditor within seven days of admission or rejection of such application and to the corporate debtor.

5. (a) Section 165 of the Companies Act, 2013 provides for the maximum permissible number of directorships that a person can hold. According to this section:

No person, after the commencement of this Act, shall hold office as director, including any alternate directorship, in more than 20 companies at the same time. [Section 165(1)]

Provided that out of the limit of 20, the maximum number of public companies in which a person can be appointed as a director shall not exceed 10. [Proviso to section 165(1)]

Private companies that is either holding or subsidiary company of a public company shall be included in reckoning the limit of public companies in which a person can be appointed as a director.

The MCA vide Notification No. 466(E) dated 5th June, 2015, has clarified that section 165(1) of the Companies Act, 2013, shall not apply to section 8 companies.

Based on the above provisions, Mr. Fortune can hold the directorship as follows:

- (i) 6 Public companies. Since the maximum number of public companies in which one can be a director is 10 only.
 - (ii) No more private company. Since his total holding has already reached the maximum permissible 20 companies (All inclusive of public and private companies)
 - (iii) 2 more companies registered under section 8 of the companies Act, 2013. Since there is no restriction on the number of directorship, a person can hold in the companies registered under section 8 of the Companies Act, 2013.
- (b) (i) The official liquidator can invoke the provisions contained in Section 328 of the Companies Act, 2013 to recover the sale of assets of the company. According to Section 328, if the Tribunal is satisfied that there is a preference transfer of property, movable or immovable, or any delivery of goods, payment, execution made, taken or done by or against a company within six months before making winding up application, the Tribunal may order as it may think fit and may declare such transaction invalid and restore the position.

Since in the present case, the sale of immovable property took place on 15th September, 2017 and the company went into liquidation on an application filed on 10th February, 2018 i.e., within 6 months of making winding up application and such transfer of property has resulted a loss to the company.

The official liquidator will be able to succeed in proving the case under Section 328 by way of fraudulent preference as the property was sold to a Vansh (Pvt.) company, a creditor in which the son of the ex-managing director was interested.

Hence, the transaction made will be regarded as invalid and restore the position of the company as if no transfer of immovable property has been made.

- (ii) **Determination of rights and liabilities of fraudulently preferred persons:** According to section 331 of the Companies Act, 2013, where a company is being wound up and anything made, taken or done after the commencement of this Act is invalid under section 328 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then, without prejudice to any rights or liabilities arising, apart from this provision, the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as a surety for the debt, -

- to the extent of the mortgage or charge on the property, or
- the value of his interest,

Whichever is less.

- (c) Section 59 of the Insolvency & Bankruptcy Code, 2016 empowers a corporate person intending to liquidate itself voluntarily if it has not committed any default to initiate voluntary liquidation proceedings under the provisions of this Code.

Any corporate person registered as a company shall meet the following conditions to initiate a voluntary liquidation process:-

- (a) A declaration from majority of the directors of the company verified by an affidavit stating
 - i. That they have made a full inquiry into the affairs of the company and have formed an opinion that either the company has no debts or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
 - ii. That the company is not being liquidated to defraud any person.

- (b) The declaration shall be accompanied with the following documents, namely:
 - i. Audited financial statements and a record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
 - ii. A report of the valuation of the assets of the company, if any, prepared by a registered valuer.
- (c) After making the declaration the corporate debtor shall within four weeks -
 - i. Pass a special resolution at a general meeting stating that the company should be liquidated voluntarily and insolvency professional to act as the liquidator may be appointed.
 - ii. Pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration (fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, if any) and appointing an insolvency professional to act as the liquidator.

In the given situations, according to the above provisions, a declaration was made on affidavit of the some of the directors of the X Ltd. verifying full inquiry of the affairs of the company, is not in compliance as the majority was the requirement for initiation of the voluntary liquidation proceedings. And the further declaration that the company is not being liquidated to defraud any person is not given in the affidavit. The documents to be accompanied with declaration shall be as per the point (b) given above.

Where if the articles fixed the period of duration of continuation and that period expires, X Ltd. after making declaration, shall within 4 weeks pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration as fixed by its articles and appointing an insolvency professional to act as the liquidator.

6. ¹(a) (i) According to Rule 4(1) of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class or classes of companies shall have at least 2 directors as independent directors:

- (1) the Public Companies having paid up share capital of 10 crore rupees or more; or
- (2) the Public Companies having turnover of 100 crore rupees or more; or
- (3) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

In the present case, XYZ Limited is an unlisted public company having a paid-up capital of ₹ 20 crores as on 31st March, 2017 and a turnover of ₹ 150 crores during the year ended 31st March, 2017. Thus, as per the Companies (Appointment and Qualification of Directors) Rules, 2014, XYZ Limited shall have at least 2 directors as independent directors.

- (ii) Where a company ceases to fulfil any of 3 conditions for three consecutive years, it shall not be required to comply with these provisions (i.e., related to appointment of Independent directors) until such time as it meets any of such conditions.

¹ The answer is based on the amended rule Inserted by the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 Dated 5th July, 2017.

(iii) As per Rule 4(2) of the Companies (Appointment and Qualification of Directors) Rules, 2014 the following classes of unlisted public company are not covered under Rule 4(1), namely: -

- (a) a joint venture;
- (b) a wholly owned subsidiary; and
- (c) a dormant company as defined under section 455 of the Act.

Accordingly, XYZ, a dormant company does not require to fulfil the conditions stated in Rule 4(1) for appointment of Independent Directors.

(b) According to section 376 of the Companies Act, 2013, where any body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under part II of chapter XXI of the Companies Act, 2013, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it is incorporated.

(c) (i) As per section 411 of the Companies Act, 2013 the qualification of chairperson of NCLAT shall be a person who is or has been a judge of the Supreme Court or the Chief Justice of a High Court. In the given case, chairperson is a judge and not a chief justice of a High Court, so his appointment is invalid. However, Section 431 of the Companies Act, 2013 provides of the provisions that no act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Tribunal or the Appellate Tribunal, as the case may be.

Accordingly, the act or proceeding of the Appellate Tribunal (NCLAT) shall not be invalid on the basis of defect in the constitution of the Appellate Tribunal.

(ii) **Appointment of judge:** A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working. A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.

Since in the given case, Mr. A, a judicial magistrate of a lower court was appointed to hold the office of the special court for the speedy disposal of the pending cases under the Act. As per the above provision, person shall be qualified for appointment as a judge of a Special Court if he, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge. Here Mr. A. was not complying with the eligibility criteria, so his appointment as a judge of special court is not tenable.

(d) **Meaning of Capital Account Transaction:** It means a transaction which alters the assets or liabilities including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of a person resident outside India, and includes transactions referred to in sub-section (3) of section 6 of FEMA Act, 1999.

The Reserve Bank of India has formed the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.

As per these regulations, capital account transactions may be classified under the following heads.

- (1) Permissible capital account transaction of persons resident in India (schedule 1)
- (2) Permissible Capital transactions of persons resident outside India (schedule II).

(3) Prohibited capital account transactions.

A person resident in India may enter into any of the following capital account transactions provided the regulations specified by the Reserve Bank of India in respect of such capital account transactions are complied with.

In view of the above, **an Investment by person resident in India in Foreign Securities** is permissible capital account transaction.

- (e) As per the arbitration agreement, the disputes submitted/ proposed to be submitted to arbitration must be arbitrable. In other words that law must permit arbitration in that matter only which are capable of arbitration. There are certain disputes that the law retains exclusively for the court, and the same cannot be submitted for arbitration. The rationale is that given the nature of disputes, the courts are the only appropriate forum for adjudicating the matter.

In the given matter, it clearly reveals of non-performance of the duties of the Raman garments manufacturer within the specified timelines. To safeguard himself from the non-performance of the contract, took the cause of theft and setting of fires in the manufacturing unit. Accordingly, in the given situation, the submitted disputes before arbitration is not arbitrable as they are the offences of criminal natures. Such types of disputes is to be tried by the court of proper jurisdiction.

Therefore, the submission of the dispute in the situation to arbitration is invalid.